

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9133 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANSANGJI VARVAJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
RULE NOT RECD BACK for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 12/03/99

ORAL JUDGEMENT

The petitioner, through this writ petition under Article 226 of the Constitution of India, has challenged the order of detention dated 14.10.1998 passed by the District Magistrate, Mehsana under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act and has prayed that the aforesaid order be quashed and he be released from

illegal detention.

2. The brief facts are that in surprise inspection of the Government approved fair price shop run by the petitioner, certain irregularities were noticed which were of serious nature. The irregularities were that the petitioner was selling the food grains and palmolive oil in black market with a view to earn illegal profit for personal gain. The irregularities were also noticed in sale of kerosene at a price higher than the prescribed and fixed price. Breach of conditions of licence was also noticed. The detaining authority was satisfied that the petitioner was involved in black marketing activities and with a view to preventing such activities in order to ensure smooth supply of essential commodities like sugar, rice, wheat, palmolive, kerosene etc. that the impugned order of detention was passed.

3. The impugned order of detention has been challenged only on one ground namely that the Central Government has not expeditiously disposed of the representation of the petitioner as well as the successive representations and that there is no explanation of delay in disposal of such representations. It was, therefore, contended that the unexplained delay in disposal of representation has not only violated the fundamental right of the petitioner guaranteed under Article 22(5) of the Constitution of India but has also rendered the detention order and continued detention of the petitioner illegal. In support of this contention, the learned counsel for the petitioner has relied upon the decision of the apex Court in the matter of Rajammal v. State of Tamil Nadu and another reported in AIR 1999 SC 684. It was a case under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982. While considering section 3 of this Act, the apex Court found that there was five days' delay in considering and disposing of the representation of the detenu. The apex Court found and observed that mere absence of the Minister at the head quarter is not a ground to justify the delay. The order of detention was, therefore, held to be bad in law.

4. From the affidavit of Mr. A.L.Makhijani, Under Secretary in the Department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi, filed on behalf of the Union of India, it is clear that the delay between 17.11.1998 to 10.12.1998 has not at all been explained. In paragraph 4 of this affidavit, it is admitted that the representation dated 28.10.1998 made by the son of the

detenu was received in the concerned section on 6.11.1998. Parawise comments from the State Government were called on the same day vide telegram dated 6.11.1998 and were received on 17.11.1998 and, thereafter, another representation dated 24.10.1998 alongwith the parawise comments were received from the State Government on 17.11.1998. Both the representations and the parawise comments of the State Government were considered by the competent authority of the Central Government and were rejected on 10.12.1998. The third representation dated 17.11.1998 made by the detenu alongwith parawise comments were received by the Central Government on 4.12.1998. This representation was also considered and rejected on 10.12.1998. Thus, it is clear that from this paragraph of the affidavit that all the representations were rejected on 10.12.1998 despite the fact that the parawise comments were received from the State Government on 17.11.1998. There is no explanation of delay between 17.11.1998 to 9.12.1998, the day on which the representations were rejected is to be excluded. It is, therefore, a case of 22 days' delay which has remained totally unexplained in the counter affidavit. Five days' delay, according to the apex Court, in considering the representation, was enough to render the detention order invalid. There is then reason to hold the detention order invalid for unexplained delay of 22 days in considering the representation. For the reasons stated above, non-consideration of the representations of the detenu expeditiously by the Central Government has rendered the detention order as well as the continued detention illegal. The impugned order of detention has, therefore, to be quashed and set aside. The petition therefore succeeds and is allowed accordingly. The impugned order of detention dated 14th October, 1998 (ANnexure "A" to the petition) is hereby quashed and set aside. The petitioner-detenu shall be released forthwith if he is not wanted in any other case.

12.3.1999. (D.C.Srivastva,J.)

Vyas